

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1021

AN ACT

AMENDING SECTIONS 13-105, 13-501 AND 13-1204, ARIZONA REVISED STATUTES;
RELATING TO AGGRAVATED ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act" means a bodily movement.

7 2. "Benefit" means anything of value or advantage, present or
8 prospective.

9 3. "Calendar year" means three hundred sixty-five days' actual time
10 served without release, suspension or commutation of sentence, probation,
11 pardon or parole, work furlough or release from confinement on any other
12 basis.

13 4. "Community supervision" means that portion of a felony sentence
14 imposed by the court pursuant to section 13-603, subsection I and served in
15 the community after completing a period of imprisonment or served in prison
16 in accordance with section 41-1604.07.

17 5. "Conduct" means an act or omission and its accompanying culpable
18 mental state.

19 6. "Crime" means a misdemeanor or a felony.

20 7. "Criminal street gang" means an ongoing formal or informal
21 association of persons ~~whose~~ IN WHICH members or associates individually or
22 collectively engage in the commission, attempted commission, facilitation or
23 solicitation of any felony act and that has at least one individual who is a
24 criminal street gang member.

25 8. "Criminal street gang member" means an individual to whom two of
26 the following seven criteria that indicate criminal street gang membership
27 apply:

28 (a) Self-proclamation.

29 (b) Witness testimony or official statement.

30 (c) Written or electronic correspondence.

31 (d) Paraphernalia or photographs.

32 (e) Tattoos.

33 (f) Clothing or colors.

34 (g) Any other indicia of street gang membership.

35 9. "Culpable mental state" means intentionally, knowingly, recklessly
36 or with criminal negligence as those terms are ~~thusly~~ defined:

37 (a) "Intentionally" or "with the intent to" means, with respect to a
38 result or to conduct described by a statute defining an offense, that a
39 person's objective is to cause that result or to engage in that conduct.

40 (b) "Knowingly" means, with respect to conduct or to a circumstance
41 described by a statute defining an offense, that a person is aware or
42 believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the
43 circumstance exists. It does not require any knowledge of the unlawfulness
44 of the act or omission.

1 (c) "Recklessly" means, with respect to a result or to a circumstance
2 described by a statute defining an offense, that a person is aware of and
3 consciously disregards a substantial and unjustifiable risk that the result
4 will occur or that the circumstance exists. The risk must be of such nature
5 and degree that disregard of such risk constitutes a gross deviation from the
6 standard of conduct that a reasonable person would observe in the
7 situation. A person who creates such a risk but ~~WHO~~ is unaware of such risk
8 solely by reason of voluntary intoxication also acts recklessly with respect
9 to such risk.

10 (d) "Criminal negligence" means, with respect to a result or to a
11 circumstance described by a statute defining an offense, that a person fails
12 to perceive a substantial and unjustifiable risk that the result will occur
13 or that the circumstance exists. The risk must be of such nature and degree
14 that the failure to perceive it constitutes a gross deviation from the
15 standard of care that a reasonable person would observe in the situation.

16 10. "Dangerous drug" means dangerous drug as defined ~~by~~ ~~IN~~ section
17 13-3401.

18 11. "Dangerous instrument" means anything that under the circumstances
19 in which it is used, attempted to be used or threatened to be used is readily
20 capable of causing death or serious physical injury.

21 12. "Deadly physical force" means force ~~which~~ ~~THAT~~ is used with the
22 purpose of causing death or serious physical injury or in the manner of its
23 use or intended use is capable of creating a substantial risk of causing
24 death or serious physical injury.

25 13. "Deadly weapon" means anything designed for lethal use, including a
26 firearm.

27 14. "Economic loss" means any loss incurred by a person as a result of
28 the commission of an offense. Economic loss includes lost interest, lost
29 earnings and other losses ~~which~~ ~~THAT~~ would not have been incurred but for the
30 offense. Economic loss does not include losses incurred by the convicted
31 person, damages for pain and suffering, punitive damages or consequential
32 damages.

33 15. "Enterprise" includes any corporation, association, labor union or
34 other legal entity.

35 16. "Felony" means an offense for which a sentence to a term of
36 imprisonment in the custody of the state department of corrections is
37 authorized by any law of this state.

38 17. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
39 rifle, shotgun or other weapon ~~which~~ ~~THAT~~ will or is designed to or may
40 readily be converted to expel a projectile by the action of expanding gases,
41 except that it does not include a firearm in permanently inoperable
42 condition.

43 18. "Government" means the state, any political subdivision of the
44 state or any department, agency, board, commission, institution or
45 governmental instrumentality of or within the state or political subdivision.

1 19. "Government function" means any activity ~~which~~ THAT a public
2 servant is legally authorized to undertake on behalf of a government.

3 20. "Intoxication" means any mental or physical incapacity resulting
4 from use of drugs, toxic vapors or intoxicating liquors.

5 21. "Misdemeanor" means an offense for which a sentence to a term of
6 imprisonment other than to the custody of the state department of corrections
7 is authorized by any law of this state.

8 22. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section
9 13-3401.

10 23. "Offense" or "public offense" means conduct for which a sentence to
11 a term of imprisonment or of a fine is provided by any law of the state in
12 which it occurred or by any law, regulation or ordinance of a political
13 subdivision of that state and, if the act occurred in a state other than this
14 state, it would be so punishable under the laws, regulations or ordinances of
15 this state or of a political subdivision of this state if the act had
16 occurred in this state.

17 24. "Omission" means the failure to perform an act as to which a duty
18 of performance is imposed by law.

19 25. "Peace officer" means any person vested by law with a duty to
20 maintain public order and make arrests.

21 26. "Person" means a human being and, as the context requires, an
22 enterprise, a public or private corporation, an unincorporated association, a
23 partnership, a firm, a society, a government, a governmental authority or an
24 individual or entity capable of holding a legal or beneficial interest in
25 property.

26 27. "Petty offense" means an offense for which a sentence of a fine
27 only is authorized by law.

28 28. "Physical force" means force used upon or directed toward the body
29 of another person and includes confinement, but does not include deadly
30 physical force.

31 29. "Physical injury" means the impairment of physical condition.

32 30. "Possess" means knowingly to have physical possession or otherwise
33 to exercise dominion or control over property.

34 31. "Possession" means a voluntary act if the defendant knowingly
35 exercised dominion or control over property.

36 32. "Property" means anything of value, tangible or intangible.

37 33. "Public servant":

38 (a) Means any officer or employee of any branch of government, whether
39 elected, appointed or otherwise employed, including a peace officer, and any
40 person participating as an advisor or consultant or otherwise in performing a
41 governmental function.

42 (b) Does not include jurors or witnesses.

43 (c) Includes those who have been elected, appointed, employed or
44 designated to become a public servant although not yet occupying that
45 position.

34. "Serious physical injury" includes:

(a) Physical injury ~~which~~ THAT creates a reasonable risk of death, or ~~which~~ THAT causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

(b) THE IMPEDIMENT OF NORMAL BREATHING OR CIRCULATION OF BLOOD THAT CAUSES A LOSS OF CONSCIOUSNESS OR A REASONABLE RISK OF LOSS OF CONSCIOUSNESS.

35. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

36. "Vehicle" means a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

37. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

38. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

Sec. 2. Section 13-501, Arizona Revised Statutes, is amended to read:

13-501. Persons under eighteen years of age; felony charging; definitions

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age and is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age and is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
4. A class 3, 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

1 5. Any felony offense committed by a chronic felony offender.

2 6. Any offense that is properly joined to an offense listed in this
3 subsection.

4 C. A criminal prosecution shall be brought against a juvenile in the
5 same manner as an adult if the juvenile has been accused of a criminal
6 offense and has a historical prior felony conviction.

7 D. At the time the county attorney files a complaint or indictment the
8 county attorney shall file a notice stating that the juvenile is a chronic
9 felony offender. Subject to subsection E of this section, the notice shall
10 establish and confer jurisdiction over the juvenile as a chronic felony
11 offender.

12 E. Upon motion of the juvenile the court shall hold a hearing after
13 arraignment and before trial to determine if a juvenile is a chronic felony
14 offender. At the hearing the state shall prove by a preponderance of the
15 evidence that the juvenile is a chronic felony offender. If the court does
16 not find that the juvenile is a chronic felony offender, the court shall
17 transfer the juvenile to the juvenile court pursuant to section 8-302. If
18 the court finds that the juvenile is a chronic felony offender or if the
19 juvenile does not file a motion to determine if the juvenile is a chronic
20 felony offender, the criminal prosecution shall continue.

21 F. Except as provided in section 13-921, a person who is charged
22 pursuant to this section shall be sentenced in the criminal court in the same
23 manner as an adult for any offense for which the person is convicted.

24 G. For the purposes of this section:

25 1. "Accused" means a juvenile against whom a complaint, information or
26 indictment is filed.

27 2. "Chronic felony offender" means a juvenile who has had two prior
28 and separate adjudications and dispositions for conduct that would constitute
29 a historical prior felony conviction if the juvenile had been tried as an
30 adult.

31 3. "Forcible sexual assault" means sexual assault pursuant to section
32 13-1406 that is committed without consent as defined in section 13-1401,
33 paragraph ~~4~~ 5, subdivision (a).

34 4. "Historical prior felony conviction" has the same meaning
35 prescribed in section 13-604.

36 5. "Other violent felony offense" means:

37 (a) Aggravated assault pursuant to section 13-1204, subsection A,
38 paragraph 1 INVOLVING SERIOUS PHYSICAL INJURY TO ANOTHER AS DEFINED IN
39 SECTION 13-105, PARAGRAPH 34, SUBDIVISION (a).

40 (b) Aggravated assault pursuant to section 13-1204, subsection A,
41 paragraph 2 involving the use of a deadly weapon.

42 (c) Drive by shooting pursuant to section 13-1209.

43 (d) Discharging a firearm at a structure pursuant to section 13-1211.

1 Sec. 3. Section 13-1204, Arizona Revised Statutes, is amended to read:

2 13-1204. Aggravated assault; classification; definition

3 A. A person commits aggravated assault if the person commits assault
4 as defined in section 13-1203 under any of the following circumstances:

5 1. If the person causes serious physical injury to another.

6 2. If the person uses a deadly weapon or dangerous instrument.

7 3. If the person commits the assault after entering the private home
8 of another with the intent to commit the assault.

9 4. If the person is eighteen years of age or older and commits the
10 assault upon a child the age of fifteen years or under.

11 5. If the person commits the assault knowing or having reason to know
12 that the victim is a peace officer, or a person summoned and directed by the
13 officer while engaged in the execution of any official duties.

14 6. If the person knowingly takes or attempts to exercise control over
15 a peace officer's or other officer's firearm and the person knows or has
16 reason to know that the victim is a peace officer or other officer employed
17 by one of the agencies listed in paragraph 10, subdivision (a), item (i),
18 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution
19 of any official duties.

20 7. If the person knowingly takes or attempts to exercise control over
21 any weapon other than a firearm that is being used by a peace officer or
22 other officer or that the officer is attempting to use, and the person knows
23 or has reason to know that the victim is a peace officer or other officer
24 employed by one of the agencies listed in paragraph 10, subdivision (a), item
25 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the
26 execution of any official duties.

27 8. If the person knowingly takes or attempts to exercise control over
28 any implement that is being used by a peace officer or other officer or that
29 the officer is attempting to use, and the person knows or has reason to know
30 that the victim is a peace officer or other officer employed by one of the
31 agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv)
32 or (v) of this subsection and is engaged in the execution of any official
33 duties. For the purposes of this paragraph, "implement" means an object that
34 is designed for or that is capable of restraining or injuring an
35 individual. Implement does not include handcuffs.

36 9. If the person commits the assault knowing or having reason to know
37 the victim is a teacher or other person employed by any school and the
38 teacher or other employee is upon the grounds of a school or grounds adjacent
39 to the school or is in any part of a building or vehicle used for school
40 purposes, any teacher or school nurse visiting a private home in the course
41 of the teacher's or nurse's professional duties or any teacher engaged in any
42 authorized and organized classroom activity held on other than school
43 grounds.

44 10. If the person meets both of the following conditions:

1 (a) Is imprisoned or otherwise subject to the custody of any of the
2 following:

3 (i) The state department of corrections.

4 (ii) The department of juvenile corrections.

5 (iii) A law enforcement agency.

6 (iv) A county or city jail or an adult or juvenile detention facility
7 of a city or county.

8 (v) Any other entity that is contracting with the state department of
9 corrections, the department of juvenile corrections, a law enforcement
10 agency, another state, any private correctional facility, a county, a city or
11 the federal bureau of prisons or other federal agency that has responsibility
12 for sentenced or unsentenced prisoners.

13 (b) Commits an assault knowing or having reason to know that the
14 victim is acting in an official capacity as an employee of any of the
15 entities prescribed by subdivision (a) of this paragraph.

16 11. If the person commits the assault while the victim is bound or
17 otherwise physically restrained or while the victim's capacity to resist is
18 substantially impaired.

19 12. If the person commits the assault knowing or having reason to know
20 that the victim is a fire fighter, fire investigator, fire inspector,
21 emergency medical technician or paramedic engaged in the execution of any
22 official duties, or a person summoned and directed by such individual while
23 engaged in the execution of any official duties.

24 13. If the person commits the assault knowing or having reason to know
25 that the victim is a licensed health care practitioner who is certified or
26 licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned
27 and directed by the licensed health care practitioner while engaged in the
28 person's professional duties. ~~The provisions of~~ This paragraph ~~do~~ DOES not
29 apply if the person who commits the assault is seriously mentally ill, as
30 defined in section 36-550, or is afflicted with Alzheimer's disease or
31 related dementia.

32 14. If the person commits assault by any means of force ~~which~~ THAT
33 causes temporary but substantial disfigurement, temporary but substantial
34 loss or impairment of any body organ or part or a fracture of any body part.

35 15. If the person commits assault as prescribed by section 13-1203,
36 subsection A, paragraph 1 or 3 and the person is in violation of an order of
37 protection issued against the person pursuant to section 13-3602 or 13-3624.

38 16. If the person commits the assault knowing or having reason to know
39 that the victim is a prosecutor.

40 B. Except pursuant to subsections C, ~~and~~ D AND E of this section,
41 aggravated assault pursuant to subsection A, paragraph 1, 2 or 6 of this
42 section is a class 3 felony except if the victim is under fifteen years of
43 age in which case it is a class 2 felony punishable pursuant to section
44 13-604.01. Aggravated assault pursuant to subsection A, paragraph 14 of this
45 section is a class 4 felony. Aggravated assault pursuant to subsection A,

1 paragraph 7 or 10 of this section is a class 5 felony. Aggravated assault
2 pursuant to subsection A, paragraph 3, 4, 5, 8, 9, 11, 12, 13, 15 or 16 of
3 this section is a class 6 felony.

4 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
5 this section committed on a peace officer while the officer is engaged in the
6 execution of any official duties is a class 2 felony. Aggravated assault
7 pursuant to subsection A, paragraph 14 of this section committed on a peace
8 officer while the officer is engaged in the execution of any official duties
9 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
10 5 of this section resulting in any physical injury to a peace officer while
11 the officer is engaged in the execution of any official duties is a class 5
12 felony.

13 D. Aggravated assault pursuant to:

14 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony
15 if committed on a prosecutor.

16 2. Subsection A, paragraph 14 of this section is a class 3 felony if
17 committed on a prosecutor.

18 3. Subsection A, paragraph 16 of this section is a class 5 felony if
19 the assault results in a physical injury to a prosecutor.

20 E. AGGRAVATED ASSAULT COMMITTED PURSUANT TO SUBSECTION A, PARAGRAPH 1
21 OF THIS SECTION THAT INVOLVES A SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION
22 13-105, PARAGRAPH 34, SUBDIVISION (b) IS A CLASS 5 FELONY EXCEPT IF THE
23 VICTIM IS UNDER FIFTEEN YEARS OF AGE IT IS A CLASS 4 FELONY.

24 ~~E.~~ F. For the purposes of this section, "prosecutor" means a county
25 attorney, a municipal prosecutor or the attorney general and includes an
26 assistant or deputy county attorney, municipal prosecutor or attorney
27 general.